

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 155 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NAJABHAI RANABHAI MESURIYA

Appearance:

GOVERNMENT PLEADER for Petitioner
MR RA PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This Second Appeal is filed by the State of Gujarat being aggrieved by the judgement and decree passed by the learned Assistant Judge Amreli in Regular Civil Appeal No.59 of 1982 on 9th November, 1983

confirming thereby the judgement and decree passed in Regular Civil Suit No.316 of 1980 passed by the Civil Judge (S.D.), Amreli. The appellant, State of Gujarat, was defendant in the above said Regular Civil Suit No.316 of 1980 and the present respondent filed the suit stating that he has purchased a plot from Survey No. 1659 situated on Chakkargadh Road, at Amreli from its original owner, one Shantilal Hiralal Adatia and thereafter, the respondent-original plaintiff constructed a kuchcha house on the said plot for his residence. For the said construction, the Mamlatdar, Amreli started a proceedings against the plaintiff which was N.A. No. 449 of 1980 because the Mamlatdar considered that such construction on said plot, i.e. on agriculture land, was against the law and without permission. The Mamlatdar, Amreli ultimately ordered the plaintiff to pay Rs.3258.10 ps. towards non-agricultural assessment and penalty, etc. The plaintiff filed the suit stating that the order of the Mamlatdar was without jurisdiction and void and against the principle of natural justice. Therefore, a declaration was sought to declare the said order of the Mamltadar to be illegal, void and without jurisdiction. The State of Gujarat-defendant, resisted the suit and contended that as per law such non-agricultural assessment, etc. was recoverable for which sufficient opportunities were given to the plaintiff. In addition to this, legal contentions that there was no notice under section-80, that the suit was time barred and that the Civil Court has no jurisdiction to try this suit, were also taken by the present appellant. However, after the trial, the learned Civil Judge (S.D.), Amreli vide judgement and decree dated 8th March, 1988 came to the conclusion that the defendants were not entitled to recover the composition fee from the plaintiff. It was also ordered that the defendants were entitled to recover the amount of Non-agricultural assessment and penalty from the plaintiff. By way of a permanent injunction, the defendants were restrained by the Trial Court to recover the composition fee from the plaintiff. The District Court, Amreli in Regular Civil Appeal No.59 of 1982 vide judgement and order of the Asst. Judge, Amreli on 9/11/1983 confirmed the judgement and decree passed by the trial court and dismissed the appeal filed by the State of Gujarat-original defendant. Hence, this Second Appeal by the State of Gujarat.

2. Following substantial questions of law framed by this Court :

(1) Whether in the facts and circumstances of the

case both the courts below have erred in holding that the suit is not barred for want of notice under section-80 of the C.P.C. ?

(2) Whether in the facts and circumstances of the case both the courts below have erred in holding that the suit of the plaintiff is within time ?

(3) Whether in the facts and circumstances of the case, the lower courts have erred in holding that the recovery of the compensation fees was legal ?

3. The learned AGP, Mr. Gharania, on behalf of the State and the learned Advocate, Mr. R.A. Patel, for the respondent, were heard at length.

4. It is clear from the record that the order of the Mamlatdar was held illegal and ultra vires by the Trial Court, so far as the same related to levying of the composition fees. The order of the Mamlatdar regarding levy of non-agricultural assessment and penalty is concerned, the trial Court declared that the Mamlatdar was entitled to recover the said amount. Therefore, the question in this Second Appeal is in narrow compass that whether the Mamlatdar was authorised to recover composition fee from the plaintiff-present respondent. Law in this respect is clear. There is no provision of law either in the Bombay Land Revenue Code or rules framed thereunder which authorises Revenue Officers to levy composition fee in a case of breach of condition or in any other case of construction made without permission. The Revenue Officers are empowered to resort to eviction proceedings and levy of penalty as well as the levy of non-agricultural assessment fees, etc., but there is no provision which authorises any officer of Revenue Department to levy composition fee. It was vehemently urged on behalf of the appellant that there were circulars of the Government and Government Resolution which authorises the Collectors and Mamlatdars to levy composition fee and both the Courts below have erred in coming to the conclusion that the Mamlatdar had no authority to recover composition fee. Therefore, this takes to the controversy that whether the Government Resolution in the form of executive direction can take place of substantial law and action taken under such executive direction can be protected. In the matter of State of Assam Vs Basantkumar, reported in AIR 1973 SC 1252, it is observed that executive directions may not take place of substantial law and hence, when there is no provision of law empowering the Revenue Officer to

recover composition fee, no such officer can be held to be competent to levy composition fee in pursuance of the executive direction. Therefore, in this view of the matter, both the Courts below rightly held that the Mamlatdar had no authority to levy composition fee from the plaintiff for the construction which he made on a plot which he purchased. The Trial Court and the Appellate Court both made it clear that the Mamlatdar was entitled to levy non-agricultural fee and penalty. Therefore, so far as this conclusion of the Courts below is concerned, the same requires no interference.

5. Other substantial question of law which arises for consideration is regarding whether the suit is filed within time. It was contended that the order of Mamlatdar is dated 24th November, 1980 and the suit is not filed within one year from that date, according to Article-100 of the Limitation Act. The contention is not well founded because the action of the Mamlatdar for levying of the composition fee is now held to be ultra vires, illegal and without jurisdiction. A party litigating and affected by this order may not challenge ultra vires order and treat the same as nonest. The affected parties may recourse to law and seek remedy when such nonest orders are attempted to be enforced against them and therefore, in those circumstances, the case will be governed by the residuary article of the Limitation Act and not by Article-100 of the Limitation Act, as contended. Ultimately, the suit would be required to be held within limitation.

6. The next contention is regarding want of statutory notice under section-80 of the Civil Procedure Code. From the record, it is found that the suit was filed for obtaining urgent relief and vide order dated 16th December, 1980, the learned Civil Judge (S.D.) while granting interim relief below Exh.7 came to the conclusion that the plaintiff was entitled to ad interim injunction as prayed for and that the notice was not necessary to be issued against the defendants. In this view of the matter, the case is covered under section-80(2) of the Civil Procedure Code. It can be said that the suit was filed with leave of the court without notice, in the circumstances, in which, the plaintiff asked for urgent interim relief. Therefore, the suit was not bad without statutory notice under section-80 of the Civil Procedure Code.

7. Last contention is regarding the jurisdiction of the Civil Court. It is clear that the jurisdiction of the Civil Court is barred by the Bombay Land Revenue

Code, but, the orders and action of Revenue authorities which came to be challenged by the plaintiff is nonest and illegal order and therefore, the Civil Court will have a jurisdiction to try the suit in which an illegal order of the Revenue Authority has been challenged.

8. In this view of the matter, there is no substance in the appeal and this Second Appeal stands dismissed. No order as to costs.

(J.R. Vora, J.)

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